

**Local 1030, Laborers International Union of North America, AFL-CIO and Hazardous Material Workers Union (R.A.K.CO., Inc., a wholly owned subsidiary of Robert A. Keasbey Co., Inc.). Case 22-CD-650**

June 30, 1994

**DECISION AND DETERMINATION OF  
DISPUTE**

BY CHAIRMAN GOULD AND MEMBERS STEPHENS  
AND DEVANEY

The charge in this Section 10(k) proceeding was filed on October 6, 1993, by Hazardous Material Workers Union (HMWU), alleging that the Respondent, Laborers Local 1030, violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing the Employer, R.A.K.CO., Inc., a wholly owned subsidiary of Robert A. Keasbey Co., Inc., to assign certain work to employees it represents rather than to employees represented by HMWU. The hearing was held on October 28, 1993, before Hearing Officer Collette Sarro.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

**I. JURISDICTION**

R.A.K.CO., Inc., a New Jersey corporation, with an office and place of business in Hoboken, New Jersey, is engaged in thermal insulation, reinsulation, asbestos abatement, and lead abatement. R.A.K.CO., Inc. is a wholly owned subsidiary of Robert A. Keasbey Co., Inc., which has an office and place of business in Newark, New Jersey. During the 12 months preceding the hearing, R.A.K.CO., Inc. and Robert A. Keasbey Co., Inc. derived gross revenue in excess of \$50,000 from the performance of services for customers located directly outside the State of New Jersey and purchased goods in excess of \$5000 directly from points outside the State of New Jersey. We find that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that HMWU and the Laborers are labor organizations within the meaning of Section 2(5) of the Act.

**II. THE DISPUTE**

**A. Background and Facts of Dispute**

In June 1993,<sup>1</sup> the Employer entered into a collective-bargaining agreement with HMWU, covering asbestos abatement employees. In September, the Em-

ployer received a subcontract to remove asbestos from the subbasements of three terminals at Newark International Airport in Newark, New Jersey. The Employer assigned the work to employees represented by HMWU.

On about September 27, the Laborers' business manager, Joseph Scifilliti, met with the Employer's president, Stephen Mandarano. Scifilliti demanded that all the asbestos removal work be assigned to employees represented by the Laborers. Mandarano refused, based on the Employer's collective-bargaining agreement with HMWU. Subsequently, the Laborers picketed the jobsite for at least 2 days. Scifilliti testified that one of the purposes of the picket line was to persuade the Employer to use employees represented by the Laborers.

**B. Work in Dispute**

The disputed work involves the removal of asbestos from the subbasement of terminals A, B, and C at Newark International Airport in Newark, New Jersey.

**C. Applicability of the Statute**

As described above, the record indicates that the Laborers demanded reassignment of the disputed work to employees represented by the Laborers. The Laborers picketed the Newark airport in furtherance of this demand. The parties stipulated that there is no voluntary method of resolving the jurisdictional dispute which would be binding on all the parties.

We find reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred and that there exists no agreed method for voluntary adjustment of the dispute within the meaning of Section 10(k) of the Act. Accordingly, we find that the dispute is properly before the Board for determination.

**D. Merits of the Dispute**

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting)*, 364 U.S. 573 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case. *Machinists Lodge 1743 (J. A. Jones Construction)*, 135 NLRB 1402 (1962).

The following factors are relevant in making the determination of this dispute.

**1. Collective-bargaining agreements**

On June 28, the Employer entered into a 1-year collective-bargaining agreement with HMWU. The contract specifically covers nonsupervisory asbestos abatement employees engaged in asbestos and lead abatement. The Employer does not have a collective-bar-

<sup>1</sup> All dates hereafter refer to 1993.

gaining agreement with the Laborers. We find that this factor favors an award of the work in dispute to employees represented by HMWU.

## 2. Employer preference and past practice

The Employer, in accordance with its preference, assigned the work in dispute to employees represented by HMWU. There is no evidence to indicate whether the Employer has in the past assigned the disputed work to employees represented by HMWU or the Laborers. We find that the Employer's preference favors awarding the work in dispute to employees represented by HMWU, but that past practice does not favor awarding the disputed work to either group of employees.

## 3. Area and industry practice

Employees represented by HMWU have performed similar asbestos removal and abatement in other area locations, including Kennedy International Airport and Grand Central Station in New York. The Laborers' business manager testified that his local represented only employees engaged in asbestos removal and abatement work. The Laborers has entered into collective-bargaining agreements with numerous employers covering laborers engaged in such work within the State of New Jersey. We find that this factor does not favor awarding the disputed work to employees represented either by the HMWU or the Laborers.

## 4. Relative skills

All employees are required by the State of New Jersey to obtain a license before they can work on an asbestos removal job. The licenses are issued to employees only after they have completed the required state schooling and testing procedures. Both HMWU- and the Laborers-represented employees possess the nec-

essary licenses. Accordingly, it appears that the employees represented by each Union are sufficiently skilled to satisfactorily perform the disputed work.

## Conclusions

After considering all the relevant factors, we conclude that employees represented by HMWU are entitled to perform the work in dispute. We reach this conclusion relying on the Employer's collective-bargaining agreement and the Employer's preference. In making this determination, we are awarding the work to employees represented by HMWU, not to that Union or its members. The determination is limited to the controversy that gave rise to this proceeding.

## DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

1. Employees of R.A.K.CO., Inc., a wholly owned subsidiary of Robert A. Keasbey Co., Inc., represented by Hazardous Material Workers Union are entitled to perform the removal of asbestos from the subbasement of terminals A, B, and C of Newark International Airport.

2. Local 1030, Laborers International Union of North America, AFL-CIO is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force R.A.K.CO., Inc., a wholly owned subsidiary of Robert A. Keasbey Co., Inc. to assign the disputed work to employees represented by it.

3. Within 10 days from this date, Local 1030, Laborers International Union of North America, AFL-CIO shall notify the Regional Director for Region 22 in writing whether it will refrain from forcing the Employer, by means proscribed by Section 8(b)(4)(D), to assign the disputed work in a manner inconsistent with this determination.